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INTRODUCTION TO THE SYMPOSIUM ON THE AMERICAN CONVENTION ON HUMAN RIGHTS AND ITS NEW INTERLOCUTORS

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Concern for the future of the inter-American human rights system (IAS) seems pervasive among both human rights activists and scholars as the American Convention on Human Rights (ACHR)—our hemisphere's most important human rights treaty—turns fifty.[1] That includes the essayists in this symposium, who have joined the hand-wringing over international institutions more generally with articles on "resistance," "pushback," "backlash," and "exit."[2] But what happens if we recast the current moment not as one of non-compliance or crisis, but of engagement by a new set of interlocutors?[3] In the 1950s, the IAS began its life at the hand of states, with little input from civil society. Starting in the 1980s, Left-leaning human rights activists resisting the military dictatorships of the Southern Cone began to play an important role in defining the IAS's docket and defending it from political attacks. At the turn of the millennium, they were joined by constitutional courts and lawyers, who began engaging with the system ever more frequently through judicial review under the ACHR.[4] Each of these groups has played an important role in shaping the IAS and making it different from, for example, the European human rights system. Our claim is that today, as the ACHR celebrates a half century and the Inter-American Court of Human Rights turns forty, there are some significant new players at the table. The essays in this symposium identify these new interlocutors and evaluate the significance of their interaction with the IAS.

To explore this new landscape, we asked a group of established and emerging IAS scholars to take seriously two theories about law that lawyers often overlook. The first is that human rights instruments are open-ended. That is, human rights law is not a set of pre-fixed norms but rather a site for the construction and reconstruction of shared commitments at the regional level. Through this lens, an attempt to reshape IAS institutions or reinterpret the ACHR may threaten particular preferences but is not necessarily a threat to the system itself. The second is the idea that legal institutions are sustained but also reshaped by their interaction with compliance constituencies, or what we are calling "interlocutors" so as not to overemphasize the notion of compliance to preset norms. By interlocutors, we refer to those actors within and without the state who are vested in and trying to reshape the

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[1] The American Convention on Human Rights was adopted in November 22, 1969.

[2] Jorge Contesse, *Resisting the Inter-American Human Rights System*, 44 YALE J. INT'L L. 179 (2019); Alexandra Huneeus & René Urueña, *Treaty Exit and Latin America's Constitutional Courts*, 111 AJIL UNBOUND 456 (2017); Ximena Soley & Silvia Steininger, *Parting Ways or Lashing Back? Withdrawals, Backlash and the Inter-American Court of Human Rights*, 14 INT'L J.L. CONTEXT 237 (2018).

[3] There is never a lack of those who clamor that there is a crisis afoot in the IAS. *See* Eduardo Ferrer, *"La Corte Interamericana Siempre ha Vivido en Crisis"*, EL PAIS (July 24, 2018) (recording the President of the Inter-American Court affirming that the Court has always been in crisis, which is also to say that there is nothing particularly unusual in the Court's current situation). For an example of a similar sense of crisis from an earlier era, see EL FUTURO DEL SISTEMA INTERAMERICANO DE PROTECCIÓN DE LOS DERECHOS HUMANOS (Juan Méndez & Francisco Cox eds., 1998).

[4] Alexandra Huneeus, *Constitutional Lawyers and the Varied Authority of the Inter-American Court*, 79 L. & CONTEMP. PROBS. 179 (2016).

system so as to make it work for them. Indeed, a feature of many successful legal systems would seem to be engagement by diverse sets of actors. Who are the significant new interlocutors of the IAS, and how are they challenging the system and shaping it anew?

The first essay, by Ximena Soley from the Max Planck Institute for Comparative Public Law and International Law, discusses the history and central role of civil society in the IAS. Since the early 1970s, civil-society organizations have been critical actors in shaping the system: they have not only opposed dictatorships by providing information on gross and systematic human rights violations but also developed sophisticated strategies of legal mobilization—what Soley calls the "juridification" of human rights struggles.[5] This process, she claims, has largely set the agenda of the IAS. But, as the system faces new challenges, civil-society organizations may need to change some of their strategies of interaction with the system; as Soley writes, the "juridification of human rights struggles might have reached its peak."[6] Soley thus argues for a more political form of engagement to keep the IAS relevant and functional in the future.

René Urueña, from Universidad de los Andes in Bogotá, introduces a topic that has received little scholarly attention: the emergence of evangelical groups as a strong political force in Latin America and their intensive engagement with the Inter-American Court of Human Rights. Urueña describes—and challenges—the common narrative of a confrontation between Christian Evangelism and human rights norms and principles, typically seen in *evangélicos*' opposition to LGBTI rights and reproductive rights, two areas where the Court has rendered significant decisions.[7] Urueña observes that in the past two decades the expansion of evangelical groups across the region has caused them to shift from the private to the public sphere, where they now work to influence public debate, as seen most notably in their backlash against the Inter-American Court's adoption of same-sex marriage as a regional human rights standard. Urueña notes, however, that evangelicals do not simply seek "the collapse of the distinction between secular and religious discourse,"[8] but instead to influence how that distinction is redrawn. In such a context, Urueña urges the Court to create "argumentative spaces that allow for the Evangelical experience to exist in the public sphere in Latin America,"[9] noting that the Court's innovative caselaw on indigenous peoples' rights may serve as a good point of reference for such an endeavor.

The third essay, by Paulina García-Del Moral from Guelph University, analyzes the impact of one of the Inter-American Court's most important decisions: *González et al. ("Cotton Field") v. Mexico*, which found the state responsible for its failure to prevent, investigate, and punish systematic acts of gender-based violence, and articulated novel standards on the matter for all Latin American states.[10] García-Del Moral explains that the Latin American feminist movement and feminist scholars praised the decision. However, the Mexican legal system's

[5] Ximena Soley, *The Crucial Role of Human Rights NGOs in the Inter-American System*, 113 AJIL UNBOUND 355 (2019).

[6] *Id.* at 355.

[7] *See* Atala Riffo and Daughters v. Chile, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 239 (Feb. 24, 2012); Duque v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 310 (Feb. 26, 2016); Flor Freire v. Ecuador, Preliminary Exceptions, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 315 (Aug. 31, 2016); State Obligations Concerning Change of Name, Gender Identity, and Rights Derived from a Relationship Between Same-Sex Couples (Interpretation and Scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, In Relation to Article 1, of the American Convention on Human Rights), Advisory Opinion OC-24/17, Inter-Am. Ct. H.R. (ser. A) No. 24 (Nov. 24, 2017); Artavia Murillo and Others v. Costa Rica ("In Vitro Fertilization"), Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 257 (Nov. 28, 2012).

[8] Rene Urueña, Evangelicals *at the Inter-American Court of Human Rights*, 113 AJIL UNBOUND 360 (2019).

[9] *Id.* at 360.

[10] González and Others ("Cotton Field") v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H. R. (ser. C) No. 205 (Nov. 16, 2009).

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subsequent handling of *feminicidio*—the technical name for the murder of women for gender reasons—has been far from what was expected when *Cotton Field* came down. Drawing on interviews with both state and non-state actors conducted over several years, the essay explores the various forms of overt and covert institutional resistance to *Cotton Field*'s implementation and considers how both political and social change may not follow some of the IAS's most high-profile legal responses to human rights violations.[11]

Par Engstrom from the University College London further explores the relationship between civil society, states, and the IAS, observing that the IAS's distinctive institutional history can provide guidance as to the system's ability to adapt to changing political contexts. Engstrom explores "a delicate tension" underlying the IAS: it is a state-driven regime of human rights protection, the legitimacy of which resides in civil society's perception of the system's ability to be independent from states and to hold them accountable.[12] He observes that the internalization of human rights norms is a legitimating factor for civil society's efforts to mobilize both legally and politically and argues that such actors should not only worry about the need to defend progress, but also to strengthen resilience.

Jorge Contesse from Rutgers University explores the new terrain of human rights law in Latin America, discussing how new conservative governments try to curb the IAS. His essay notes the dramatic shift in regional politics—from the wave of Left-wing governments in the 2000s to the surge of nationalist and conservative governments in recent years—and observes that the political shift coincides with an increasingly expansive caselaw by the Inter-American Court, exemplified in the adoption of the "conventionality control" doctrine and decisions on social rights that are seemingly in tension with both the text and intent of the ACHR. Contesse warns that responses to the criticisms by conservative governments should not be downplayed as mere attacks based on notions of sovereignty and as a push to import foreign doctrines, such as the margin of appreciation. Instead, he suggests a more constructive engagement with states, introducing the notion of "constrained deference" as a tool to allow a sounder interaction between states and the Inter-American Court of Human Rights.[13]

Finally, Alexandra Huneeus from the University of Wisconsin discusses some of the ways in which non-liberal actors may embrace and shape human rights law. As she observes, many scholars and commentators have been paying attention to overt acts of resistance, pushback, and backlash against international institutions in general and the inter-American human rights in particular.[14] Huneeus instead examines two instances of "positive engagement"—that is, cases in which non-liberal actors do not reject but instead *use* human rights law to advance their causes—and suggests that incorporating non-liberal norms and concerns "may be an apt survival strategy, albeit not the only one, for the region's human rights institutions in our time."[15] Specifically, Huneeus discusses the 2017 decision of Bolivia's Plurinational Constitutional Tribunal to strike down constitutional norms under the ACHR, and the emergence of eco-rights as justiciable claims before domestic courts. She asks whether such cases may help us to better understand, and ultimately enrich, human rights law in the face of new challenges.

Taken together, the group of essays provides an original and compelling glimpse into the life of the IAS. The essays focus on actors working from within and outside of the state; actors from the Left, the Right, and the center; and new interlocutors as well as old ones in new clothes. The essays provide insight into the history as well as the present of the IAS, which is fitting for a semicentennial. The symposium as a whole suggests that this is indeed a time of fluidity: over the next few years the IAS will be changing, perhaps dramatically. But it will likely not be ending—that there are new actors in the field of struggle shows that the system is considered worth fighting

[11] Paulina García-Del Moral, *The "Formally Feminist" State: A Potential New Player in the Inter-American Human Rights System?*, 113 AJIL UNBOUND 365 (2019).

[12] Par Engstrom, *Between Hope and Despair: Progress and Resilience in the Inter-American Human Rights System*, 113 AJIL UNBOUND 370 (2019).

[13] Jorge Contesse, *Conservative Governments and Latin America's Human Rights Landscape*, 113 AJIL UNBOUND 375 (2019).

[14] Alexandra Huneeus, *When Illiberals Embrace Human Rights*, 113 AJIL UNBOUND 380 (2019).

[15] *Id.*

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for. Further, the authors of the essays represent a new generation of IAS scholarship that draws on social science theories and views law not only from a legal perspective but also as a political phenomenon. Reading between the lines, the symposium suggests that the IAS will be supported, analyzed, and shaped by strong interdisciplinary scholarly networks, which is perhaps another new type of interlocutor that deserves study.

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